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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 NEVADA FAIR HOUSING CENTER, INC., )

10 Plaintiff, ) 02:05-CV-00948-LRH (PAL)

11 v. )

12 CLARK COUNTY, a political subdivision of )

13 the State of Nevada, and BARBARA )

14 GINOULIAS, individually and in her capacity )

15 as Director of the Department of )

Comprehensive Planning, )

Defendants. )

16 **ORDER**

17 Presently before the court is a Motion to Dismiss and Motion to Require Joinder of  
18 Necessary Party (# 2<sup>1</sup>) filed by defendants Clark County and Barbara Ginoulias (“Ginoulias”).  
19 Clark County and Ginoulias have also filed a supplement to their motion (# 6). Nevada Fair  
20 Housing Center, Inc. (“NFHC”) has filed an opposition (# 8) and Defendants replied (# 10).

21 **I. Factual Background**

22 This is an action brought pursuant to the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*,  
23 challenging a provision of the Clark County zoning ordinance that allegedly discriminates against  
24 people with disabilities. NFHC is a nonprofit Nevada corporation that promotes the “equal  
25 opportunity in the rental of housing and elimination of all forms of illegal housing discrimination.”

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26 <sup>1</sup>Refers to the court’s docket number.

1 (First Am. Compl. ¶ 4.) Ginoulias is the Director of the Department of Comprehensive Planning,  
 2 the agency responsible for enforcing Clark County's zoning ordinance. *Id.* ¶ 6.

3 The first amended complaint "alleges that defendants have engaged in a pattern or practice  
 4 of discrimination on the basis of disability through the enactment and enforcement of land use  
 5 regulations governing the location of group homes for disabled persons." (Pl.'s Opp'n to Mot. to  
 6 Dismiss (# 8) at 2-3.) Specifically, the first amended complaint alleges that Clark County denied  
 7 applications to operate group homes on the ground that the proposed group homes were within  
 8 1,500 feet of another group home. (First Am. Compl. ¶¶ 18-21.) In addition, the first amended  
 9 complaint alleges that "Clark County planning staff, acting under the direction and supervision of  
 10 defendant Ginoulias or her agents, . . . [discouraged individuals] from applying for zoning  
 11 permission to operate such homes because of the minimum separation requirement imposed under  
 12 Clark County Code § 30.44.020." *Id.* ¶ 22. Defendants are currently seeking to dismiss NFHC's  
 13 claims against Ginoulias in her individual capacity and joinder of the state of Nevada as a  
 14 necessary party to this action. The court will address each issue below.

15 **II. Motion to Dismiss**

16 **A. Legal Standard**

17 In considering "a motion to dismiss, all well-pleaded allegations of material fact are taken  
 18 as true and construed in a light most favorable to the non-moving party." *Wyler Summit P'Ship v.*  
 19 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). However, a court  
 20 does not necessarily assume the truth of legal conclusions merely because they are cast in the form  
 21 of factual allegations in plaintiff's complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752,  
 22 754-55 (9th Cir. 1994).

23 There is a strong presumption against dismissing an action for failure to state a claim. *See*  
 24 *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted). "The issue is  
 25 not whether a plaintiff will ultimately prevail but whether [he or she] is entitled to offer evidence in

1 support of the claims.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (overruled on other grounds  
2 by *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982)). Consequently, the court should not grant a  
3 motion to dismiss “for failure to state a claim unless it appears beyond doubt that the plaintiff can  
4 prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*,  
5 355 U.S. 41, 45-46 (1957); *see also Hicks v. Small*, 69 F.3d 967, 969 (9th Cir. 1995).

6 **B. Discussion**

7 In seeking to dismiss the claims against Ginoulias, defendants argues that the first amended  
8 complaint does not contain any allegations against Ginoulias in her individual capacity. (Mot. to  
9 Dismiss (# 2) at 4.) Alternatively, defendants argue that the first amended complaint should be  
10 dismissed on the basis of qualified immunity because NFHC has failed to allege a violation of a  
11 clearly established right. *Id.* at 5. NFHC responds by arguing that Ginoulias is liable for  
12 discrimination due to her role as a supervisor. (Pl.’s Opp’n to Mot. to Dismiss (# 8) at 5.) In  
13 addition, NFHC argues that Ginoulias is not entitled to qualified immunity because the complaint  
14 sufficiently alleges a violation of clearly established law. *Id.* at 8.

15 Public officials are provided with a qualified immunity “‘insofar as their conduct does not  
16 violate clearly established statutory or constitutional rights of which a reasonable person would  
17 have known.’” *Spoklie v. Montana*, 411 F.3d 1051, 1060 (9th Cir. 2005) (quoting *Jensen v. City of*  
18 *Oxnard*, 145 F.3d 1078, 1085 (9th Cir. 1998)). This immunity is granted broadly and “provides  
19 ample protection to all but the plainly incompetent or those who knowingly violate the law.”  
20 *Moran v. Washington*, 147 F.3d 839, 844 (9th Cir. 1998) (quoting *Malley v. Briggs*, 475 U.S. 335,  
21 341 (1986)).

22 When determining whether qualified immunity is applicable, the burden is on the plaintiff  
23 to prove the alleged right was clearly established at the time it was violated. *Id.* To be clearly  
24 established, “[t]he contours of the right must be sufficiently clear that a reasonable official would  
25 understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640  
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1 (1987). Once a plaintiff has met their burden, the burden shifts to the defendant to show that a  
 2 reasonable official could have believed the conduct was lawful. *See Act Up!/Portland v. Bagley*,  
 3 988 F.2d 868, 871 (9th Cir. 1993).

4 For purposes of this motion only, the court will assume that Plaintiff has met its burden of  
 5 showing a violation of a clearly established right. With this assumption, the burden shifts to  
 6 Ginoulias to show that a reasonable official could have believed the alleged conduct was lawful.  
 7 *Id.* Section 278.021 of the Nevada Revised Statutes mandates that the governing body of a county  
 8 whose population is 100,000 or more “establish by ordinance a minimum distance between  
 9 residential establishments that is at least 660 feet but not more than 1,500 feet.” Nev. Rev. Stat. §  
 10 278.021(4). In compliance with this statute, Clark County enacted County Code § 30.44.020,  
 11 which requires a group home to have a minimum separation of 1,500 feet from any existing group  
 12 home. *See Clark County Code § 30.44.020.*

13 All factual allegations in the first amended complaint relate to either denying applications  
 14 for a group home, or discouraging such applications, because the proposed home was within 1,500  
 15 feet of another group home.<sup>2</sup> (First Am. Compl. ¶¶ 18-22.) Therefore, the factual allegations  
 16 against Ginoulias arise out of her actions taken in accordance with a duly enacted ordinance.<sup>3</sup>  
 17 Officials who rely on a duly enacted ordinance are “ordinarily entitled to rely on the assumption  
 18 that the council members have considered the views of legal counsel and concluded that the  
 19 ordinance is a valid and constitutional exercise of authority.” *Grossman v. City of Portland*, 33  
 20 F.3d 1200, 1209 (9th Cir. 1994). Looking at the facts in the light most favorable to Plaintiffs, the  
 21 court finds that it was reasonable for Ginoulias to believe that her conduct was lawful. Therefore,  
 22 the court finds that Plaintiff’s claim against Ginoulias in her individual capacity is barred by

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23  
 24 <sup>2</sup>The court will not necessarily assume the truth of legal conclusions cast in the form of factual  
 25 allegations. *See Clegg*, 18 F.3d at 754-55.

26 <sup>3</sup>The issue of whether this ordinance violates the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*,  
 27 is not in front of the court at this time.

1 qualified immunity.

2 **III. Joinder**

3 In addition to seeking dismissal of the claim against Ginoulias in her individual capacity,  
4 Defendants argue that the State of Nevada must be joined in this action pursuant to rule 19 of the  
5 Federal Rules of Civil Procedure. (Mot. to Dismiss (# 2) at 8.) NFHC does not have a “strong  
6 objection” to joining the State of Nevada but argues that joinder is not required. (Pl.’s Opp’n to  
7 Mot. to Dismiss (# 8) at 9.)

8 Rule 19(a) requires the joinder of a party to an action if:

9 (1) in the person’s absence complete relief cannot be accorded among those already  
10 parties, or (2) the person claims an interest relating to the subject of the action and is  
11 so situated that the disposition of the action in the person’s absence may (i) as a  
12 practical matter impair or impede the person’s ability to protect that interest or (ii)  
leave any of the persons already parties subject to a substantial risk of incurring  
double, multiple, or otherwise inconsistent obligations by reason of the claimed  
interest.

13 Fed. R. Civ. P. 19(a).

14 In seeking joinder of the State of Nevada, Defendants have represented that failing to join  
15 the State of Nevada will lead to inconsistent obligations in the incorporated and unincorporated  
16 parts of Clark County. Furthermore, it appears that the court would not be able to find that the  
17 ordinance at issue violates the Fair Housing Act without also finding that section 278.021(4) of the  
18 Nevada Revised Statutes violates the Fair Housing Act. Based on the foregoing, the court will  
19 order the joinder of the State of Nevada as a rule 19(a) party. Should the State of Nevada believe  
20 that it should not be joined in this action, the court notes that it has the option of filing a motion to  
21 dismiss.

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1 IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss and Motion to  
2 Require Joinder of Necessary Party (# 2) is hereby GRANTED. NFHC's claims against Ginoulias  
3 in her individual capacity are hereby DISMISSED. NFHC is hereby ordered to file an amended  
4 complaint within thirty (30) days of this order adding the State of Nevada as a defendant to this  
5 action.

6 IT IS SO ORDERED.

7 DATED this 13<sup>th</sup> day of January, 2006.



10 LARRY R. HICKS  
11 UNITED STATES DISTRICT JUDGE  
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